IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7810 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGENT, DEODAR BRANCH - Petitioner(s)
Versus
SECRETARY-APPEAL & 4 - Respondent(s)

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Appearance :
MS LILU K BHAYA for Petitioner(s) : 1,
MR RC KODEKAR AGP for Respondent(s) : 1 - 3.
MR DHAVAL VAKILFOR MR VIJAY H PATEL for Respondent(s) : 4,
RULE SERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/03/2007

ORAL JUDGMENT

1. Ms.Lilu K.Bhaya, learned counsel for the petitioner, Mr.R.C. Kodekar, learned A.G.P. for respondent Nos.1 to 3 and Mr.Dhaval Vakil,

under authority of Mr.Vijay H.Patel, learned counsel for the respondent NO.4. None for the respondent No.5, though served.

2. Present proceedings arise from the transaction of mortgage which was entered into between the petitioner – creditor and respondent Nos.4 and 5 – debtors on 17/3/1983.

3. A notice for auction was issued on 24/9/1992 fixing the date of auction on 24/11/1992. On 14/10/1992, a certificate of average value per Acre of the land was obtained from the Talati. The respondent Nos.4 and 5 received the notices. Notices of auction was published on the Notice Board of the Collector, Mamlatdar and Talati on 24/3/1990 i.e. before the date of auction, demand notice was issued, but nothing was paid therefore, the exercise was undertaken.

4. On 24/11/1992 as per the schedule auction took place and on 1/1/1993, respondent No.3 i.e. Special Recovery Officer confirmed the sale. Vide order dtd.20-25/11/1993, respondent No.1 set aside the sale. The respondent No.3, thereafter, required the petitioner Bank to

return the amount of purchase in view of the impugned order. Thereafter, under legal advise, the petitioner, Bank through its agent, has filed the present writ application.

5. It is to be noted that no prospective purchaser came forward at the time of auction, therefore, the State Government offered the bid and purchased the property for a sum of Rs.64,440=00 which was the amount due to the petitioner Bank. Since after the payment was received by the Bank, they were not entitled to recover anything from the respondent Nos.4 and 5, but in view of the demand notice from the respondent NO.3, they have filed the present petition.

6. At the very outset, Mr.Dhaval Vakil, under the authority of Mr.Vijay H. Patel, learned counsel for the respondent Nos.4 submits that the respondent Nos.4 and 5 are ready and willing to pay the amount of Rs.64,440=00 (Rupees Sixty Four Thousand Four Hundred Forty only) with 15% interest from the date on which the State Government had deposited the said amount till its return to the State Government. According to

him, for some reason or other, they had challenged the validity of the auction, but they never denied their responsibility to make the payment.

7. Mr.Kodekar, learned Assistant Government Pleader for State, on the other hand, submits that if the respondent Nos.4 and 5 are ready and willing to deposit the amount of Rs.64,440=00 with interest at the rate of 15% from the date the State Government had deposited the money, with the Recovery Officer till its deposit with the Recovery Officer, they would have no grievance against the petitioner.

8. Ms.Bhaya, learned counsel for the petitioner submits that as they have already received the money, in fact, they have no monetary claim, but they were required to file the present writ application in view of the demand letter.

9. Taking into consideration the totality of the circumstances, I direct the respondent Nos.4 and 5 to deposit an amount of Rs.64,440=00 (Rupees Sixty Four Thousand Four Hundred Forty only) with interest at the rate of 15% from the date

of deposit of Rs.64,440=00 till its re-deposit with the respondent No.3 i.e. Special Recovery Officer, Gujarat State Coopertive Agricultural and Rural Development Bank Limited, Palanpur, District Banaskantha. The amount shall be deposited by the respondent Nos.4 and 5 on or before 10/4/2007 with upto date interest.

10. On petitioner's appearance before the said Recovery Officer along with a copy of this order, it shall be the duty of the recovery officer to receive the money. After receiving the money, the said Recovery Officer shall immediately inform the State Government that the State through its authority or officer can withdraw the amount. Even-otherwise, the State would be free to make an application for withdrawal of the amount.

11. If by the date already fixed, the respondent Nos.3 and 4 do not deposit the amount, then this petition shall stand allowed and the auction held by the competent authority on 24/11/1992 shall stand confirmed.

12. The petition stands disposed of accordingly.

(R.S. GARG, J.)

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